IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of case

Crl. Appeal No. 220 of 2001 , decided on 19-11-2003
(Old No. 333/1985)

Ramesh Chand Vs. State

A.F.R. (Approved for reporting)
~~Not approved for reporting~~

Date 19-11-2003 Initials of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Appeal No. 220 of 2001
(Old No. 333/1985)

Ramesh Chand S/o Sri Om Prakash
R/o Mohamadpur Devmal
P.S. Mandawar
District Bijnor …….. Appellant

Versus

State …….... Respondent

Sri Chander Mauli Shah, learned counsel for the appellant.
Sri G.S.Sandhu, learned A.G.A. for the State.

Coram: Hon. Irshad Hussain, J.

Date: November 19, 2003.

ORAL JUDGMENT **: (Per: Hon'ble Irshad Hussain, J.)**

Appellant Ramesh Chandra has been convicted and sentenced to undergo rigorous imprisonment (R.I.) for two years each under Section 457/380 IPC and R.I. for three months under Section 3/7 of the Essential Commodities Act (for short 'E.C.Act'), which were directed to run concurrently, per judgment and order dated 29.1.1985 passed by the then Special Judge, Uttarkashi in special trial no.1/83.

2) The case of the prosecution, briefly stated, was the appellant while working as one of the Chaukidars of cement store of Irrigation Division-II, Uttarkashi on the date of the occurrence, that is, night intervening 2/3.12.1982 was found in front of the cement godown situate in Joshiyara, P.S. Kotwali, Uttarkashi. He was seen cleaning the road in front of the godown by a piece of gunny bag. Jiwanand (PW-2) and Prem Date who were also employed as Chaukidars found the 'Kunda' of the cement godown broken. They reported the matter to the incharge of the godown Junior Engineer Sri Lakhan Lal (PW-1). In the meanwhile one Sakil Ahamad gave information that appellant had broken lock of the godown and had sold away the cement kept there and the commodity had been loaded in a truck. It was also told that appellant had

paid Rs. 1,000/- to the labourers for loading. The godown was then checked and 200 bags of cement were found missing. PW-1 then lodged FIR at P.S. at 3:15 AM on 3.12.1982 and appellant was handed over to the police.

3) PW-5 S.I., Sri K.R. Ary started investigation and he recorded the statements of the witnesses. He intercepted the truck no. USK 5365 at Tamba-Khani, Uttarkashi at 4:30 AM and seized the vehicle. It was found that the truck was loaded with 200 bags of stolen cement. Atar Singh and Kishan Singh – the occupants of the truck were also taken into custody and memo (Ex. Ka.2) was then prepared. Then he took the appellant Ramesh Chandra to the appellant's house and in the presence of the witnesses appellant handed over Rs. 3,750/- to him after taking the amount from a wheat flour container, vide memo (Ex.ka.4). A sum of Rs. 1,000/- paid to the labourers was also handed over by Sakil Ahamad to the investigation officer (I.O.) vide memo (Ex.ka.12). Other formalities for the investigation were completed and thereafter charge-sheet was submitted in the case against the appellant and others under Sections 457, 380 and 411 IPC and 3/7 of the E.C. Act. The sanction (Ex.ka.7) under E.C. Act was accorded by the then District Magistrate, Uttarkashi.

4) Appellant pleaded not guilty to the charges and claimed that he had been falsely implicated in the case at the instance of Lakhan Lal (PW-1) who wanted to save himself from being prosecuted. In the trial prosecution examination five witnesses whereas appellant examined two witnesses DW-1 Pritam Singh and DW-2 Kishan Singh. Accused Atar Singh also examined himself and two witnesses in defence. The learned Special Judge on the basis of his appreciation of the evidence believed the evidence of the prosecution and convicted and sentenced the appellant as aforesaid, whereas other accused arraigned were acquitted.

5) I have heard the learned counsel for both parties and have gone through the entire evidence with the assistance of both of them and have also perused the judgment in appeal, and have considered the facts and the circumstances of the case.

6) Learned counsel for the appellant argued that the appellant has, in fact, been made a scapegoat to screen the real culprit Junior Engineer PW-1 Lakhan Lal, who being posted in Joshiyara had overall control of the stores and godowns of the Irregation Division in Uttarkashi and that he was in fact instrumental in having the cement bags removed from the godown. Learned counsel also submitted that in fact there was no such godown from where the

appellant could have ménage to surreptitiously remove large number of the cement bags without being noticed by anyone during the time of the loading of the same in the truck. Having gone through the entire evidence, I do not find any cogent reasons to find favour with the arguments advanced on behalf of the appellant. The occurrence took place in the dead hours of the night between 2/3.12.1982 in the winters when people in the hills remain mostly inside their houses and therefore there was nothing unusual if none could see the actual theft of cement bags being committed and these being loaded in truck no. USK 5365. The incident would have gone unnoticed if the appellant would have not tried to become too smart by taking the work of cleaning of the filtered cement from the bags infront of the godown by the other Chaukidars, including PW-2 Jiwanand. On suspicion being raised the occurrence of theft came to light and as stated above even the truck loaded with 200 bags of cement was intercepted by the investigating officer.

7) Further the evidence of PW-3 Usaman Ali is definite and cogent to prove that these 200 bags of cement from the godown were being loaded by him and other companion labourers on the asking of appellant Ramesh Chandra who paid them handsome remuneration amounting to Rs. 1000/-. Cross-examination of this witness did not result in bringing on record in any beneficial to the defence of the appellant and the learned Judge therefore was fully justified in believing the evidence of this witness also.

8) PW-1 Lakhan Lal junior incharge of the godown of the Irrigation Depratment has testified that the godown from where the theft was committed belong to the Irrigation Department and cement was stored in it. His cross-examination did not result in showing that the said godown was not taken on rent by the department and the cement of the Irrigation Department was not kept in it. DW-1 and DW-2 were examined as defence witnesses to show that the said godown was not in the tenancy of Irrigation Department. DW-2, the clerk in the District Supply Office, Uttarkashi filed copy of the relevant G.O. and copies of letters sent to different departments with instructions that the descriptions and location of the cement godown was to be disclosed and the record was to be maintained by the D.S.O. According to this witness, no information was sent to the D.S.O. by the Irrigation Department. Pointing out to this, it was argued that since the information about the location of the godown was not given, the evidence of Lakhan Lal should not have been believed by the trial court. The argument was rejected by the learned trial

court and in my view rightly so because even if the information was not given, the evidence on record established beyond doubt that the cement godown in question was let out by the landlord Smt. Daveshwari Uniyal to the department, and the same was used for storing the cement by the said tenant. In view thereof, the defence evidence also failed to make any dent in the veracity of the prosecution version and its evidence.

9) The claim of the events of the night of the occurrence in quick succession resulted in the recovery of 200 bags of the cement from the above mentioned truck bags were testified by PW-3, Usaman Ali. The cross-examination of this witness does not admit of inference that these cement bags were not loaded on the instructions of the appellant. Therefore, the evidence of the prosecution conclusively connect the appellant to the act of breaking the 'Kunda' and then open the lock of the godwon in the night of the occurrence and thereafter getting the 200 bags of cement loaded in the truck and receiving the money for the same from the purchaser which was produced by him from his house and handed over to the investigating officer. As proved by the evidence of witness Usaman Ali, the sum of Rs. 1000/- as the labour charges were also paid by the appellant and this amount was also handed over to the investigating officer. In the fact of the reliable evidence of the prosecution the learned trial court was fully justified in coming to the conclusions about the commission of the offences of lurking house breaking the theft punishable under Sections 457 and 380 IPC.

10) Cement was controlled commodity and its purchase and sale etc. was subject to the provisions of U.P. Cement Control Order, 1973. Under clause 5 of the said order only the licensee was permitted to carry on the business of purchase and sale of the cement and since the appellant had sold the 2000 bags of the cement in contravention of the provision of the Cement Control order he was also rightly held guilty of the offence punishable under Section 3/7 of the E.C. Act.

10) In view of the above, there is no merit in this appeal and the same is liable to be dismissed. The appeal is dismissed. The judgment and order dated 29.1.1985 of the trial court is affirmed. The appellant is on bail he shall be taken into custody forthwith shall be sent to jail to serve out the sentences as awarded by the Special Judge, Uttarkashi in special trial no. 1/83.

11) Let the record be sent back to the Sessions Judge, Uttarkashi for necessary action and compliance and the report to be submitted within two months.

(Irshad Hussain, J.)

(Rawat)